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WPS ENERGY SERVICES, INC.,

PETITION FOR CERTIFICATION AS
AN ALTERNATIVE RETAIL ELECTRIC
SUPPLIER.

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No. 00-0199

CHIEF CLERK'S OFFICE

RESPONSE TO PETITION OF PEOPLES ENERGY
SERVICES CORPORATION FOR LEAVE TO INTERVENE
IN OPPOSITION TO PETITION

COMES NOW WPS Energy Services, Inc. ("WPS-ESI") by its Attorneys, Lueders, Robertson & Konzen and in response to the Petition of Peoples Energy Services Corporation (Peoples) for leave to intervene and opposition to petition, state as follows:

I. Peoples' Petition should be denied.

1. The Application for Certification as alternative retail electric supplier was filed in this cause on the 2nd day of March, 2000. Notice was served upon the affected electric utilities. Notice of the filing of the Application was published in the state newspaper on the 10th day of March, 2000. Notice of the Application and the filing of the Application has also been posted on the Commission's website.

2. Peoples Petition for leave to intervene should be denied. The Petition is not timely and Peoples has not shown that it is a party of interest.

3. The Commission must act on the Application by April 24, 2000. In spite of the fact that the Application was timely filed and Notice of the Application was posted on the Commission's website, and published in the state newspaper Peoples elected not to intervene in this proceeding

until it was almost complete.¹ Peoples has intervened after the proposed Order has been issued and Briefs on Exception filed. Peoples Petition for Leave to Intervene is not timely. Peoples has not represented, as required by Commission Rule, that it will accept the status of the record. (83 Ill.Admin.Code Sec. 200.200) In the absence of such a declaration Peoples' Petition for Leave to Intervene should not be accepted.

4. Peoples is not a party of interest. Persons entitled to notice of the filing of the Application are the affected electric utilities. Peoples is not a retail customer who will purchase services from WPS-ESI. Peoples is a potential competitor of WPS-ESI. Because it is not an electric utility as defined under Section 16-102 the Public Utilities Act, (220 ILCS 5/16-102) and because it is not an end-use retail customer, Peoples is not a party of interest in this proceeding, and its Petition for Leave to Intervene should be denied.

II. Peoples' objections to ARES certification for WPS-ESI are without merit.

1. WPS-ESI did acknowledge that the State of Wisconsin and State of Michigan are not open to retail electric competition (Peoples Petition, Par. 3)

2. WPS-ESI agrees with Peoples that Sec. 16-115(d)(5) creates an exception to the reciprocity clause which allows the Commission to grant certification where the applicant demonstrates that the Illinois electric utilities in whose service territories it seeks to compete can not physically and economically deliver power and energy into the service territories of the applicants electric utility affiliates. (Peoples Petition Par.4)

3. Peoples misconstrues or misunderstands the response of WPS-ESI to the Hearing

¹As of April 17, 2000 neither WPS Energy or its attorneys have been officially served with the Peoples pleading.

Examiner's Ruling of March 13, 2000. (Peoples Petition, Par. 6) The Hearing Examiner requested additional information with regard to the WPS-ESI Application. Part of the Examiner's Request was that WPS-ESI provide additional information relating to the ability of all Illinois Electric Utilities to "physically and economically" deliver electric power and energy to WPS-ESI Electric Utility Affiliates in Wisconsin and Michigan. While WPS-ESI continues to believe that electric power and energy cannot be "physically and economically" delivered from Interstate Power, South Beloit, Mid-American Energy, Ameren UE and Mt. Carmel Public Utilities within the State of Illinois to the electric utility affiliates of WPS-ESI in Wisconsin and Michigan, it did not have sufficient resources to perform the analysis necessary to respond to the Hearing Examiner's Request as it related to each of the effected Illinois electric utilities, in a timely fashion. Therefore, it elected to voluntarily withdraw its request to be certified to serve end use retail customers within the service territories of Interstate Power, South Beloit, Mid-American Energy, Ameren UE, and Mt. Carmel. (See Response to Hearing Examiner's Request, 451.30(c)(3) Notice to Utilities, 2nd Par.)

4. Peoples alleges that power and energy can be physically delivered to the transmission and distribution owning affiliates of WPS-ESI. (Peoples Petition, Par. 7) Peoples ignores the fact that the Hearing Examiner's Proposed Order, recommending certification of WPS-ESI, concludes that electric power and energy can be physically delivered to the transmission and distribution owning affiliates of WPS-ESI. The Examiner's Proposed Order provides in pertinent part:

"The information provided by Applicant demonstrates there are constraints on transmission capability between Illinois and northeastern Wisconsin; however, this does not constitute a demonstration that electric power and energy cannot be physically delivered. Nevertheless, given the Commission's conclusions above regarding the inability to economically deliver power to the service areas of Applicant's affiliates at this time, a showing that electric

power and energy cannot be physically delivered by Illinois utilities to the service areas of the Applicant's affiliates is unnecessary." (Proposed Order, P. 9 of the electronic version, Sec. V - RECIPROCITY ISSUES UNDER 16-115(d)(5) - Conclusions, last full paragraph)

Therefore, Peoples' objection to certification of WPS-ESI because power can be "physically" delivered to a transmission and distribution owning affiliates of WPS-ESI, is without merit. The Examiner correctly concluded the power and energy cannot be economically delivered to its affiliates and therefore it is exempt from the reciprocity clause. (Peoples Pet., Par. 7).

5. Contrary to the allegations of Peoples, the Application of WPS-ESI is not self serving. (Peoples Petition, Par 8) The statute required that parties interested in being certified as an ARES demonstrate their compliance with the Act, and the provisions of Section 16-115. In order to insure that the reciprocity is not violated the applicant must demonstrate that power and energy cannot be "physically and economically" delivered to the transmission and distribution system of the applicant or applicants' affiliate. Demonstration of compliance with this exception to the reciprocity clause by its very nature requires analysis and explanation. That which is "self-serving", in the opinion of Peoples, is in fact the explanation that must be given in order to demonstrate compliance with the reciprocity clause. WPS-ESI supported its application with analysis of pricing variations and costs that bear directly on the issue of the ability to "economically" deliver power and energy from Illinois and into the transmission and distribution systems of its transmission and distribution owning affiliates. A similar approach was followed by Duke Solutions, Inc., in Docket 99-0440, and ultimately approved by this Commission. The application in question has been reviewed by the Hearing Examiner and Staff assigned to assist the Hearing Examiner in reviewing the application. The application was previewed by representatives of the Staff. To now suggest that the application

is "self-serving" is inappropriate, the rationale and the explanations set forth in the application and the supplemental material have been reviewed by independent personnel of the Illinois Commerce Commission, who have no particular interest in the matter.

6. The Customer Choice in Rate Relief Law of Illinois was not intended to protect Peoples or any other alternative retail electric supplier doing business within the State of Illinois.² (Peoples Petition, Par. 9) Its net effect is to protect electric utilities from the adverse ramifications of their investment in generating stations, an investment that they believe they were required to make under the terms and conditions of the Public Utilities Act as it existed prior to the passage of the law. The reciprocity clause was clearly not intended to protect any other interest. With regard to Peoples suggestion that the information contained in future applications be "compelling" and not "simply self-serving" similar comments could be made with regard to the Petition for Leave to Intervene filed by Peoples. The effect of Peoples recommendations, if adopted, would be to prevent WPS-ESI from completing directly with Peoples for customers in the Commonwealth Edison service territory and other portions of the State of Illinois. Therefore, Peoples' interest in this matter could be considered "self-serving".

WHEREFORE, Peoples' Petition for Leave to Intervene should be denied or in the alternative its objections ignored, and the Application of WPS-ESI approved by the Commission.


²In addition, the Michigan market will achieve full open access by January 1, 2002, and Wisconsin is pursuing a policy that moves toward greater competition. (WPS-ESI Application, Attachment C, Pp. 1-2) Therefore, Peoples will eventually have the opportunity to compete at some level in these states.

DATED this 17th day of April, 2000.

Respectfully submitted,

WPS-ESI

BY: _____


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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WPS Energy Services, Inc.,

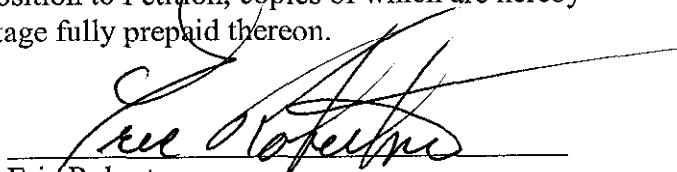
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No. 00-0199

Petition for Certification as an Alternative
Retail Electric Supplier.

NOTICE OF FILING

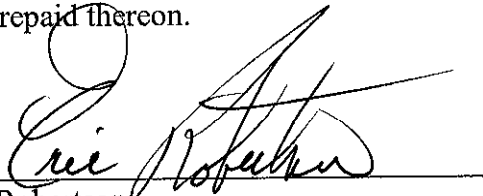
PLEASE TAKE NOTICE that on this 17th day of April, 2000, we have filed, by mailing overnight for next day delivery, with the Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, Illinois, 62701, the WPS Energy Services, Inc., Response to Petition of Peoples Energy Services Corporation for Leave to Intervene in Opposition to Petition, copies of which are hereby served upon parties of record by U.S. mail with postage fully prepaid thereon.


Eric Robertson
Lueders, Robertson & Konzen
1939 Delmar Avenue
Granite City, IL 62040

STATE OF ILLINOIS :
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COUNTY OF MADISON : SS

PROOF OF SERVICE

I, Eric Robertson, being an attorney admitted to practice in the State of Illinois, do herewith certify that I did the 17th day of April, 2000, serve copies of the attached Response to Petition of Peoples Energy Services Corporation for Leave to Intervene in Opposition to Petition, by filing same with the Clerk of the Illinois Commerce Commission and the parties on the attached service list by sending copies of same by U.S. mail, with postage fully prepaid thereon.



Eric Robertson
Lueders, Robertson & Konzen
1939 Delmar Avenue
Granite City, IL 62040

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 17th day of April, 2000.


NOTARY PUBLIC

WPS ENERGY SERVICES
ICC Docket No. 00-0199

SERVICE LIST

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